

After Death – A Guide to Probate in the District of Columbia

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A. Introduction

If a person died who lived in the District of Columbia, a decedent's estate can be opened in the Probate Division of the Superior Court of the District of Columbia when the decedent owned real estate in the District of Columbia or other assets of any value or when it necessary to obtain medical records for potential litigation purposes or to pursue litigation. If the estate is being opened to collect and transfer assets, the assets must have been owned in the decedent's name only (that is, the assets must not have joint owners or designated beneficiaries). If a person dies with a will, the original of the will should be filed with the Probate Division, and the person nominated in the will to serve as personal representative has priority to file a petition for probate and serve as personal representative. If there is no will, the person who is the decedent's next of kin has priority to file a petition for probate to open the decedent's estate and serve as personal representative (sometimes called "executor" or "executrix" in other jurisdictions). Once a person files the required papers and is appointed personal representative by the Court, he or she must collect the decedent's assets, pay or resolve any claims or bills and the expenses of the estate proceeding, keep the interested persons informed of the progress of the estate administration, file the decedent's final tax returns, prepare an Inventory and accounts, including a final account, and distribute the assets to the persons entitled to receive them. This process takes a minimum of eight months and often takes a year or longer.

A list of definitions is included at the end of this guide.

If you are considering filing a petition for probate, have read this information, have reviewed the forms that must be filed, and still have questions, consult an attorney of your choosing. In addition, for more complicated estates, for petitions by a person who is not named in the will or is not the decedent's next of kin, if the original will cannot be found and only a copy is available, or when legal advice is otherwise necessary or desirable, it is recommended that you consult an attorney of your choosing. Neither the Probate Division judges nor the staff of the Probate Division can act as your legal advisor or give legal advice.

B. Becoming a Personal Representative

To open an estate and become personal representative, a package of forms must be filed at the Probate Division. One of the Probate Division Judges will consider these filings and decide whether an estate should be opened, whether the person who has signed the papers (the "petitioner") should be appointed, whether bond is required (and, if so, in what amount), and whether any other special conditions apply to the estate. The forms are available on the Probate Division website at www.dccourts.gov and should be typed and printed out for filing. They have been developed in accordance with the law in the District of Columbia. It is important that the information requested be provided completely, neatly, and clearly.

There are two different kinds of decedent's estates in the District of Columbia – large estates and small estates – and different forms are filed depending upon which estate is being opened. If the decedent died after April 26, 2001, and owned assets of \$40,000.00 or less in his or her sole name or only real estate in another jurisdiction, a decedent's small estate can be opened. (The asset limit for decedent's dying before April 26, 2001, is included in the definition of small estate at the end of this guide.) A large estate is opened when the decedent owned assets of any value in his name only, if medical records are being sought for potential litigation, or to pursue litigation.

The following forms are generally required to open a large estate:

1. The will (if there is one) and the certification of filing a will form
2. A petition for probate
3. An abbreviated probate order
4. A Notice of Appointment of Personal Representative, Notice to Creditors and Notice to Unknown Heirs
5. (a) Bond of Personal Representative Pursuant to D.C. Code 20-502(a), or
(b) If all heirs waive bond, a waiver of bond form from each heir, or

- (c) If the will waives bond as to the petitioner (that is, states that the petitioner can serve without bond or undertaking), no bond or waivers of bond are required.
6. Court costs - either by money order or check payable to "Register of Wills" or cash. The Court costs vary depending on the size of the estate and nature of the assets. The Court cost schedule is on the Probate Division website at www.dccourts.gov.

Other forms may be required depending upon the circumstances of the estate.

C. Marshaling the Assets

One of a personal representative's duties is to locate, identify, and take possession of all of the decedent's probate (or sole name) assets. This is called marshaling the assets. The personal representative should keep complete and accurate records of all transactions and all assets and liabilities of the decedent from the date of death of the decedent until the appointment of the personal representative has been terminated. Assets include but are not limited to money in any form (cash, bank accounts, certificates of deposit), investments (stock, mutual funds, bonds, brokerage accounts), real estate, personal effects (automobiles, paintings, furniture), unclaimed property, and ownership interests in closely held businesses or partnerships.

Other, non-probate assets such as jointly owned realty or bank accounts, life insurance policies, certificates of deposit, or pension or retirement benefits with named beneficiaries may pass directly to the joint owner or named beneficiary outside the estate proceeding. The personal representative may need to obtain documentation about these assets for tax purposes, but they are not part of the probate estate. Please consult an attorney of your choosing if you need advice regarding whether an asset is a probate asset or a non-probate asset.

The process of marshaling assets varies. For example, personal effects may be secured in the home of the decedent or held by the personal representative. Title certificates to vehicles should be secured and protected pending sale or distribution. Real estate should be secured, managed, and insured, and tax and utility bills should be re-directed to come to the personal representative and paid. Financial investments should be transferred to an estate bank or brokerage account that is held in the name of the estate by the personal representative and for which an Estate Identification Number (EIN) has been obtained from the Internal Revenue Service. Unclaimed property of the decedent, such as inactive bank accounts, may have been transferred to the District of Columbia. To find

such property, search the website <http://cfo.dc.gov/cfo>, click on "Unclaimed Property," then "Search the Unclaimed Property Database."

D. Paying Claims or Bills and Expenses of Administration

The law in the District of Columbia requires that a *Notice of Appointment*, *Notice to Creditors*, and *Notice to Unknown Heirs* be published that gives creditors and unknown heirs six months from the first date of publication to file claims against the estate or to contest the appointment of the personal representative or admission of the will if there is one. This notice is available on the Probate Division website and is filed by the petitioner with the other required documents when the petition for probate is filed. Once the Court appoints a personal representative, the first date of publication is set by the Probate Division, and the notice is transmitted by the Probate Division to the two publications chosen by the petitioner. Anyone who believes that the decedent owed them money can file a claim against the estate by filing the one-page claim form available on the Probate Division website accompanied by a \$5.00 fee. There are consequences to creditors who do not file claims. However, a failure to file a claim does not necessarily extinguish a debt or mean that the personal representative does not have to pay it from the assets of the estate. For example, car loans or mortgages and deeds of trust recorded against real estate are secured debts that must be handled by the personal representative. Debts known to the personal representative must be dealt with even if no claim is filed, and those creditors must be given notice as explained in the section on "Required Reports and Filings."

E. Compensation of Personal Representative

Any person who serves as a personal representative is entitled to reasonable compensation for the services rendered in accordance with D.C. Code, sec. 20-751. The compensation requested should be listed in the accounts provided to the interested persons. The interested persons then have the opportunity to review the amount requested. If any interested person objects to the compensation requested, that person can file a petition with the Court in accordance with D.C. Code, sec. 20-753, and the Court will review the reasonableness of the request and decide how much the personal representative should be paid.

F. Rights of Interested Persons

Interested persons have many rights under the law in the District of Columbia. Sometimes, during the administration of a probate estate, an interested person will have a problem with the personal representative that he or she is not able to solve. Although each problem is unique and may have several different solutions, some of the most common are the

following. An interested person may not wish to have a will admitted or a particular person appointed as personal representative. Ordinarily, such an issue is brought to the attention of the Court by the filing of a complaint to contest appointment of a personal representative or to remove a personal representative that has already been appointed or a complaint to deny admission of a will. An interested person has the right to petition the Court to set bond to cover his or her share of the estate, to convert the estate to a supervised administration, to order that an Inventory or account be prepared or provided, or to solve any other issue that arises. Because each estate is unique and has many different solutions, each of which has cost implications for the estate, it is recommended that you consult an attorney of your choosing for advice regarding potential courses of action. When these problems are brought to the attention of the Court by the filing of a pleading, the Court will decide.

G. Selling Estate Property

The personal representative may need to sell estate assets to pay the costs of administering the estate, to pay a claim or debt, to be able to distribute the estate to the heirs or legatees, or because the decedent's will directs that assets be sold. The powers of a personal representative are set forth in D.C. Code, sec. 20-741 and include the powers to make some sales. There are, however, circumstances in which the personal representative may find it prudent to file a petition to seek Court approval (for example, if one of the heirs or legatees does not wish there to be a sale) and other circumstances in which Court approval is required by law (for example, if the personal representative is buying an estate asset and there is a potential conflict of interest between the personal representative's interest and the estate's interest; if the real property is specifically devised in the will to a particular person but needs to be sold; or if the original bond in an estate was reduced by the value of real property and sale of that real property has been restricted). When Court approval is necessary or desirable, the personal representative files a petition detailing the proposed transaction and requesting Court approval and sends a copy to all interested persons. The Court may hold a hearing before making a decision on such a petition.

H. Tax Returns

The personal representative must file all required tax returns and may be liable for failing to do so and/or for failing to pay taxes from estate assets. The returns that need to be filed include the decedent's final federal and District of Columbia income tax returns for the year in which the decedent died (and any missing returns for previous years), federal and/or District of Columbia estate tax returns, federal and/or District of Columbia estate income tax returns, and District of Columbia inheritance tax returns. The decedent's final income tax returns are due by April 15 of the year after the

year in which the decedent died, and sometimes the personal representative will find that tax returns for previous years have not been filed. If the decedent was married, the personal representative should consult the surviving spouse to determine whether the final returns should be filed jointly.

Please note that there are short time deadlines for the filing of estate tax returns and appraisals may be necessary. The Probate Division is not able to offer information or legal advice regarding the tax returns that may be required or the taxes that may be owing other than this brief summary. Because failure to file required returns or to pay tax liabilities is a serious matter, personal representatives are advised to contact the District of Columbia Office of Finance and Revenue, the Internal Revenue Service, an accountant who specializes in tax returns for estates, and/or an experienced probate attorney for information and advice.

I. Required Reports and Court Filings

Many estates in the District of Columbia for decedent's dying after July 1, 1995, are unsupervised by Court order. In unsupervised estates, the personal representative must file the original proofs of publication of the *Notice of Appointment*, *Notice to Creditors and Unknown Heirs* from the two newspapers and a document titled *Verification and Certificate of Notice* within ninety days from the date of the appointment of the personal representative. In the verification, the personal representative certifies that he or she has sent a copy of the *Notice of Appointment*, *Notice to Creditors and Unknown Heirs* and the four sheets titled *General Information for Heirs, Legatees, and Creditors* to each of the interested persons by first class mail, restricted delivery. The Verification form is available on the Probate Division website. If these documents are not filed within the ninety-day period as required, the Court will schedule a hearing for the personal representative to appear and explain why they were not filed and may remove the personal representative at that hearing.

Whether an estate is supervised or unsupervised, an inventory must be prepared by, or at the direction, of the personal representative and served on all interested persons within ninety days from the date of the appointment of the personal representative. If the estate is supervised by the Court, the inventory must be filed with the Court within the same ninety-day time period. If the estate is unsupervised, the personal representative may file it but does not need to do so. The inventory lists all of the assets of the estate as of the date of the decedent's death, and gives approximate values for each asset. The property tax appraisal value can be used for any real estate in the District of Columbia, and the Court has an appraiser who is available to appraise certain personal property by appointment. Any

interested person has a right to file an objection or exception to an inventory with the Court in either a supervised or an unsupervised estate.

Accounts must be prepared in both supervised and unsupervised estates and mailed to all interested persons. Any interested person has a right to file an objection or exception to any account with the Court in either a supervised or unsupervised estate. In a supervised estate, the first account must be filed with the Court no later than one year and one day from the first date of publication of the *Notice of Appointment, Notice to Creditors and Unknown Heirs*. The beginning date of the first account is the date of death of the decedent. Copies of documentation substantiating the entries in the account (i.e., all bank statements, cancelled checks, receipts, etc.) must be filed with the account, so the Auditing and Appraisals Branch of the Probate Division can audit the account before presenting it to Court for approval. Subsequent accounts are due every nine months thereafter.

In an unsupervised estate, the personal representative should account at reasonable intervals or upon reasonable demand to all interested persons as defined by the law and may be compelled to account if an interested person asks the Court to order the personal representative to do so. The unsupervised personal representative should use the accounting deadlines that apply in a supervised estate as a guideline for when to prepare an account. Problems occur in estates when the personal representative does not keep the interested persons informed regarding what is occurring and why.

J. Distributing the Estate to Heirs Or Beneficiaries

The goal of most estate proceedings is distribution of the assets in the order of priority set forth in the D.C. law at D.C. Code, sec. 20-906. The priority for payment is as follows:

1. Court costs, publication costs, and bond premium
2. Funeral expenses not exceeding \$1,500.00*
3. Fiduciary and attorney's fees not exceeding \$1,000.00+
4. The homestead allowance and the family allowance
5. The exempt property allowance
6. Reasonable and necessary medical and hospital expenses of the last illness of the decedent including compensation of persons attending the decedent.
7. Claims for rent in arrears for which an attachment may be levied by law
8. Judgments and decrees of any Court in the District of Columbia.
9. All other just claims.

*Note that this amount is paid as a priority claim, but the law allows payment of more than \$1,500.00 (1) if an estate is solvent and a will allows the personal representative to pay amounts in his or her discretion, (2) when a court allows amounts in excess of \$1,500.00 but no more than \$5,000.00, or (3) when the estate is solvent and all heirs or legatees waive the funeral expense limit in writing and the waivers are filed with the Court.

+Note that these fees are generally higher, but only the first \$1,000.00 is entitled to priority payment.

The priority of distribution provisions are complicated and do not include, for example, the handling of secured debts. If estate assets are sufficient to pay all claims or debts, distribution can be relatively easy. However, if assets are not sufficient to pay all claims or debts, legal advice may be needed to distinguish those that have priority or those that are of equal priority that need to be paid pro rata (i.e., reduced equally so that each creditor receives part of their claim). In estates in which all assets are exhausted before all debts are paid, creditors lower on the list may not be paid. The Probate Division cannot give legal advice on the order of payment of claims or the amounts that should be paid. Because the personal representative may be held liable to a higher priority claimant who is not properly paid, it is important to be careful and to seek legal advice if needed.

Before distribution is made, the personal representative should prepare a final account (discussed in section "Required Reports and Court Filings") that is served on all interested persons. Interested persons have sixty days to respond or object to the account. If there is a will, the final account should show distributions to the persons named in the will to receive the assets. If there is no will, it should show distributions to the persons who are the heirs in accordance with the law in the District of Columbia. The intestacy law in the District of Columbia can be found at D.C. Code, secs. 19-301 through 19-321. Generally, the heirs are the closest living relatives of the decedent, for example, the spouse and children of a married decedent or the children of an unmarried or no longer married or widowed decedent. The shares of the heirs vary depending on the circumstances of each estate, including the number of heirs, their relationship to the decedent, and their relationship to the surviving spouse. Ordinarily, distributions cannot be made to minors or incapacitated persons and must instead be made to a Court-appointed guardian of the estate of a minor or conservator for an incapacitated adult.

Unless there is a will that provides otherwise, estate assets can be divided equally among the recipients (for example, one fur coat may be given to one person and another of substantially equal value may be given to another person) or transferred so that more than one person owns a common

interest in a specific item (for example, real estate may be deeded from the estate to more than one co-owner). Distribution of cash or personal property is made by payment or delivery to the person entitled to receive it. Distribution of real estate is made by recording a deed from the personal representative to the recipient at the Recorder of Deeds. The recording of the deed is evidence that the transfer of the real estate has occurred. In order to close the estate properly, all of the decedent's interests in real property must either be sold or transferred by deed signed by the personal representative and recorded with the Recorder of Deeds. Contact the Recorder of Deeds for additional requirements for properly transferring real estate.

K. Closing the Estate

A probate estate is not ready to close until all assets have been marshaled, all claims or debts have been dealt with, and the remaining assets have been distributed. Unsupervised estates close and the appointment of the personal representative terminates in one of two ways: (1) automatically three years from the date of the appointment of the personal representative or (2) sooner, if the personal representative chooses to file a certificate of completion with the Court. The filing of a certificate of completion is discretionary, not obligatory, and such a certificate should only be filed if the personal representative is sure that all of his or duties have been completed and all assets have been distributed.

Supervised estates close automatically with the approval of a final account by the Court, and the appointment of the personal representative terminates then if the final account requests termination, the receipts have been filed or no receipts are required, and the Court approves termination. More often, the appointment of the personal representative terminates after the approval of a final account when all receipts have been filed and a petition for termination is filed and granted by the Court.

Any claims for personal liability against a personal representative, except for fraud and except as detailed in D.C. Code, sec. 20-736, are barred one year from the filing of the certificate of completion or 3 months after the termination of appointment of the personal representative. Consult an attorney of your choosing for advice if necessary.

L. Definitions

Account	The details of the income and expenses of an estate.
Allowances	<p>For the estates of decedent's dying after April 26, 2001, there are three possible allowances to which the decedent's spouse and/or children may be entitled:</p> <ol style="list-style-type: none">(1) a reasonable family allowance not to exceed \$15,000.00 (D.C. Code, secs. 19-101.04 and 101.05),(2) the homestead allowance of \$15,000.00 (D.C. Code, sec. 19-101.02), and(3) the exempt property allowance of \$10,000 (D.C. Code, sec. 19-101.03).
Appraisal	A formal written determination of the value of a piece of personal or real property, usually as of the date of death of the decedent.
Assets	Items that the decedent owned, including but not limited to money, real property, personal items, and debts owed to the decedent.
Beneficiary	When a decedent had a will, a person or entity entitled to receive part of an estate through a provision made in the will. A person named in a contract to receive a gift, such as the beneficiary of a life insurance contract. (See, also, definition for "heir" and "legatee.")
Claim	A written document filed by a creditor of a decedent seeking payment from an estate.
Codicil	A written document changing some provision in a will that is executed with all the formalities required for the execution of a will.
Creditor	A person or organization owed money by the decedent.
Decedent	The person who died.
Estate	The assets of the decedent or the term referring to the case of a particular decedent (i.e., the estate of John Doe).
Estate administration	The procedure established by the laws in the District of Columbia for identifying the decedent's assets, paying the decedent's debts, and distributing the remaining assets to either the beneficiaries or the heirs.

Heir	A person entitled to inherit assets of a decedent when there is no will. (See, also, definition for “beneficiary” and “legatee.”)
Interested person	This is a legal term defined at D.C. Code, sec. 20-101 and includes any heir or beneficiary of the decedent, a personal representative, and anyone named in a will to be a personal representative. It may also include a creditor who has presented a claim of \$500 or more.
Intestate	Died without a will.
Inventory	A detailed list of all assets owned by the decedent and the value of each.
Legatee	A person or organization who receives an asset under the terms of a will. (See, also, definition for “beneficiary” and “heir.”)
Letters of Administration	The document issued by the Probate Division after the personal representative has been appointed that gives the personal representative the authority to act on behalf of the estate.
Non-probate property/assets	Property or assets that pass to a new owner automatically and are not considered to be property of the decedent’s probate estate.
Personal Representative	A person appointed by a Judge of the Probate Division of the D.C. Superior Court to settle the affairs of someone who has died.
Pleading	Formal legal documents presenting information to the Court and, usually, requesting Court action.
Probate	Legal process through which a personal representative is appointed and the assets of someone who has died are collected and distributed and the decedent’s debts are paid.
Register of Wills	The person in charge of the D.C. Superior Court Probate Division staff. The Register of Wills is responsible for the care and custody of all wills and pleadings and for the administrative processing of all pleadings.

Small estate	When a person dies after April 26, 2001, with assets having a gross value of \$40,000.00 or less, a small estate proceeding may be opened to appoint a personal representative, pay claims, and make distribution of the estate. If the decedent died between January 1, 1981, and June 30, 1995, the value of the small estate cannot exceed \$10,000.00. If the decedent died between July 1, 1995, and April 26, 2001, the value of the estate cannot exceed \$15,000.00.
Supervised Administration	The law requires that the Court supervise the administration of all estates for decedents who died before July 1, 1995. "Supervision" means that the personal representative is required to file inventories and accounts with the Court. (See, also, definition of "unsupervised administration".)
Testate	Died with a will which has been admitted to probate by the Court.
Unsupervised Administration	For decedents who died on or after July 1, 1995, the administration of an estate is generally unsupervised unless a specific request for supervision is made. Although inventories and accounts must be prepared, they are not usually filed with the Court. (See, also, definition of "supervised administration".)
Will	A written and properly executed testamentary writing that gives instructions regarding how the person who signed it wishes his or her assets to be distributed after his or her death. This testamentary writing becomes a will when it is admitted to probate and record by the Court.

M. Case Diary and Important Deadlines

Estate of _____

Case No. _____

Item or Action

Date or Date Completed

Date of death

File will with Probate Division within 90 days of death

Date of Court's order appointing personal representative

Date of first publication of *Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs*

Mail *Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs* to interested persons within 20 days of order of appointment

Apply to IRS for estate identification number (EIN)

Establish estate bank account (if needed)

Apply for SSA, VA, and/or employment death benefits

Mail inventory to interested persons within 90 days of appointment and

File with Court if supervised

Expiration date for filing creditor claims (six months from first date of publication of *Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs*)

File decedent's income tax return by April 15 of year after death

- Federal
- District of Columbia

File income tax returns for estate for each year estate is open if required

File estate tax returns if required

Supervised estates

- File first account due one year plus one day from first date of publication
- File subsequent accounts every nine months

Make final distributions

Automatic termination of unsupervised personal representative(3 years from date of appointment

File petition for termination of appointment (if supervised)

Date estate closed

Date certificate of completion filed if filed
